95-1656

Supreme Court, U.S.
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IN THE UNITED STATES SUPREME COURT

October 95

JEFFREY ROY TAYLOR
Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI

UPON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

JEFFREY ROY TAYLOR
7505 S.W. Beveland Road
Tigard, OR 97223
503-684-5037

Pro Se

240

QUESTIONS

1. Should a Defendant's Motion To Withdraw Guilty Plea Before Sentencing Be Accepted?

2. Should a Plea of Guilty Not Made Voluntarily Due to Fear, Duress, and Without A meeting Of The Minds Of All The Elements Be Accepted?

3. Is A Defendant Denied His Fifth Amendment Right To Due Process and His First Amendment Right To Free Speech Without Intimidation and Threats Due To The Actions Of Government Employees To Threaten Defendants With "Obstruction Of Justice" If He Simply Testified In His Own Behalf.

4. Is A Defendant Allowed A New Trial Due To New Evidence?

5. Is A Defendant Allowed To Withdraw His Plea Due To Ineffective Assistance Of Counsel?

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IN THE UNITED STATES SUPREME COURT

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Jeffrey R. Taylor	)	
	)	
Petitioner.	)	

In accordance with Supreme Court Rule 12, Petitioner respectively submits the below opening brief for petition for writ of certiorari to this Court for their positive consideration.

STATEMENT OF FACTS OF THE CASE

On September 28, 1993, the date trial was scheduled to commence, Petitioner Jeffrey Taylor unwillingly and under duress pled guilty to willfully attempting to evade and defeat income tax for calendar year 1987, a violation

of 26 U.S.C. 7201. The court accepted defendant's plea and found him guilty. On November 12, 1993, petitioner filed a motion to withdraw his guilty plea, which was denied without hearing on November 24, 1993. On December 6, 1993, the Court sentenced petitioner to three years of probation, with special conditions of four months home detention. Petiitioner at the time was enrolled in the Masters Program at Thunderbird International School of International Management in Phoenix, Arizona and left for Arizona in January 1994. Petitioner was not told by his attorney Ronald H. Hoevet he only had 30 days to appeal his conviction or sentence or he would have filed an appeal accordingly.

On June 6, 1994, petitioner returned from Arizona to Oregon and wished to appeal at that time. He was told that his time limit was past the 30 days. Petitioner therefore moved for a new trial or to withdraw his guilty plea; his motion was denied on July 18, 1994. In denying petitioner's motion, the Court held that petitioner could not receive a new trial because there never was a trial of his case. In addition, the Court held that the petitioner could attack his guilty plea post-sentencing only by direct appeal or motion under 28 U.S.C. 2255.

On November 17, 1994, petitioner filed the motion under 28 U.S.C. 2255. His motion alleges that: (1) his plea of guilty was not made voluntarily and

with understanding of the nature of the charge; (2) his conviction was obtained by use of a coerced confession; (3) he was denied effective assistance of counsel; and (4) there is newly discovered evidence which warrants consideration by this Court.

REQUEST MADE OF THE DISTRICT COURT

Petitioner Jeffrey R. Taylor moved under 28 U.S.C. 2255 to withdraw the guilty plea underlying his 1993 conviction.

CLAIM OR CLAIMS RAISED AT THE DISTRICT COURT

1. The first claim is that the Petitioner Jeffrey R. Taylor's motion to withdraw plea of guilty should have been accepted on November 24, 1993 before sentencing.

Leave should be given to withdraw plea of guilty if it was entered on through misunderstanding as to effect of such plea through fear, fraud, or official misrepresentation. Leave to withdraw guilty plea prior to sentencing should be FREELY allowed.

(U.S. v. Lias 1949, CA4 WVa 173 F2d 685)
(U.S. v. Davis 1954 CA7 Ill 212 F2d 264)
(Poole v. U.S. 1957 102 App)

Petitioner provides Withdrawl of Plea Agreement and Attached Affadavit (Exhibit 1).

The petitioner based his initial actions on fear of the government's threats of imprisionment if he testified on his own behalf. The government considered this an "obstruction of justice".

This is contrary to all of the Petitioner's actions which was to provide all information asked of him by the government. The government threatened him with this obstruction of justice not if he testified falsely but just simply testified as can be seen from the plea agreement cover letter. Note how the government underlined the word "minimum" 12 months impisonment. There is no other basis for this by the government but as a scare tactic. Petitioner also has a 92 year old father who he sees regularly and the impact of jail time upon Petitioner's father was a major consideration upon Petitioner in initially choosing to accept the plea agreement however unwillingly.

Petitioner's attorney, Mr. Ronald Hoevet, also informed Petitioner that Petitioner's ex-wife and accountant would testify that Petitioner knew he was underdeclaring his income. The reality is that Petitioner found out later that Petitioner's ex-wife and accountant told Petitioner they hoped he would go to trial as they felt Petitioner might have made some innocent mistakes in filling out his taxes but not wilfull tax evasion.

2. Petitioner should be allowed to raise issues on direct appeal and not be time barred by the 30 day rule.

Petitioner did not voluntarily waive his appeal rights. He did not realize that he had the option to appeal and had to do so within the first 30 days. Petitioner's attorney did not notify him of this time frame and this caused prejudice to the Petitioner as the Petitioner would surely have appealed under the circumstances. The government's entire objection to the Petitioner being allowed to withdraw his plea through a 2255 Motion was that he was over the 30 days for a direct appeal. It seems the government is hiding behind this technicality and not giving Petitioner his day in Court. The government scared him one day into accepting their plea agreement and is now gloating that this should scar Petitioner for the rest of his life for one wrong decision he made one day in Court due to coercion and duress from the government.

3. Conviction obtained by plea of guilty not made voluntarily or with understanding of the nature of the charge.

(U.S. v. Roberts (1977 App DC) 570 F2d 999)

This claim alone cries out for a withdrawl of the plea agreement. Here is why. On December 6, 1993 on the day of sentencing the Petitioner never agreed that the amount of tax loss owing to the government was $54,088.

Before sentencing, there was a meeting in the Judge's chambers with the Petitioner's attorney Mr. Ronald H. Hoevet, Judge Redden, and attorneys for the government, Bud Fitzgerald, and Arthur Lowry. After the meeting the Petitioner's attorney Mr. Hoevet told Petitioner that the amount of tax loss would not be determined. That is why Petitioner had the plea agreement changed to read from "Mr. Taylor admits the following: to instead read, "The government is prepared to prove that Mr. Taylor owes $54,088 in taxes. This is even noted in the government's Exhibit B-3 page 25 line 23 (Exhibit 2). In addition, the petitioner did not admit, nor would he ever admit to because he never believed it from the beginning, to any tax that was due which is an element.

This was even noted by the government in its Exhibit B-10 page 32 line 22. (Exhibit 3) In addition enclosed is a copy of the plea agreement which the Petitioner made notes of in pencil. (Exhibit 4) You will see that he circled the $54,088 figure and said that this was not correct due to carrybacks, and other credits. Yet in the governments Opposition Document dated June 22, 1994 pages 5-8 it now states Petitioner pay restitution in the amount of $54, 088. The petitioner has always felt his tax was far less then 54,088 due to loss carrybacks, business expenses,

investment losses, loans, and other appropriate deductions. The petitioner never, never agreed that the tax loss was $54,088 and there is mention in the proceedings about possible credits that would lower this figure on the government's Exhibit B-11 page 33. (Exhibit 6) The government's attorney Mr. Bud Fitzgerald quotes " Your Honor, the government does not necessarily seek that admission (that the amount of the tax loss suffered as a result of the Petitioner's alleged illegal conduct is $54,088), but just the admissions to the element of the taxes that were due and owing considering the fact that there might be credit that would apply and that sort of thing". This was directly due to Petitioner's insistence he would not accept any plea agreement which included a tax loss figure of $54,088.

It is obvious, and the government does not seem to disagree, that there was never a "meeting of the minds" about the plea agreement and about the amount of the tax loss and restitution. Therefore, Petitioner has the opportunity to withdraw his plea as this is a central point of the entire plea agreement and there was never from the beginning and even to this day any agreement on this restitution figure.

4. Guilty Plea Induced by Threats and Fear.

Petitioner was truly induced into signing the plea agreement under threats and fear. As stated earlier, the government in its plea agreement cover letter

of June 28, 1994 page 2 (Exhibit 7) clearly states that if the Petitioner testified in his own behalf, the Government would ask for an obstruction of justice.

Petitioner finds it hard to understand that testifying under oath on his own behalf is an obstruction of justice. This was clearly a threat by the government for the petitioner to accept the plea agreement (which the petitioner never asked for a plea agreement in the first place) and fear of a greater sentence. The government mentioned that Petitioner knew what he was doing at the plea hearing. Petitioner laughed when the Court asked if he was not coerced. Clearly the petitioner had a gun at his head if he did not agree and it was a definite involuntary plea. In Judge Redden's opinion he states that Petitioner who had Master's training should have known the ramifications of his actions. Petitioner was never taught in any of his Master's training classes how to handle a criminal matter and the effect of possible jail time upon his family and friends and on himself mentally and physically. These were all emotions the Government played on for their own benefit. These fears were also noted in the Petitioner's written affadavit withdrawing the plea of guilty dated November 12, 1993. (Exhibit 8). The Court can look at the signature of the Petitioner on the plea

agreement dated 7-9-93 (Exhibit 9) It is clearly not the regular signature the Petitioner makes when he is calm and was done so underfear and threats. A guilty plea is void if induced by promises or threats. This overt threat by the government deprived Petitioner of his Fifth Amendment right to due process and his First Amendment right to free speech without intimidation and threats.

5. Newly Discovered Evidence.

In June 1994, upon Petitioner's return to Oregon from his Masters course at Thunderbird in Phoenix, Arizona, Petitioner was contacted by the Civil Audit Department of the Internal Revenue Service. As has been his character since this whole matter began in 1986, Petitioner was cooperative and brought in all information to support his claim that he did not owe $54,088 in income taxes. Also since 1986 when Petitioner first tried (and has repeatedly tried) to resolve this matter amiably with the government, Petitioner could not continue trying to resolve the Civil matter about taxes, if any, owing, as the government's attorney advised the Civil Audit and Appeals Department not to proceed further until Petitioner's criminal matters had been resolved.

Again, it is the government not the Petitioner dragging this matter on. In the process of this Civil audit, Petitioner being back in Oregon obtained additional documentation showing even more his contention that $54, 088

was not the correct taxes due. This documentation was in the form of bank statements from Petitioner's corporation's bank showing huge overdraft loans (which the Petitioner had to pay back personally), corporate tax returns showing personal income. This disclosure of additional income on the Petitioner's corporate returns clearly shows that his income declared on personal returns was lower due to his believing that he had prior personal loss carrybacks that would reduce this income needing to be stated. These loss carrybacks he was told by the IRS on the phone to offset against income which he explained to the Special Agent. These are innocent errors and not wilful tax evasion. Petitioner did not know of this evidence at the time of trial or it would have greatly affected the Petitioner's actions in terms of going to trial and not signing any plea agreement.

6. Effective assistance of counsel.

Mr. Ronald H. Hoevet's statements and counsel to Petitioner clearly was an error falling outside the wide range of professionally competent assistance and that Petitioner was prejudiced by counsel's error. As stated earlier Mr. Hoevet told petitioner that Petitioner's ex-wife and Petitioner's corporate accountant would testify that Petitioner willingly knew about and commited

tax evasion. This is not true and Petitioner was told later by both that they believed Petitioner might have made some innocent mistakes on his tax return but it was not wilfull. Petitioner will call both as witnesses if he is given the opportunity by this Court or by a new trial at the District Court level. This is obviously unprofessional errors by Mr. Hoevet, and clearly there is a definite probability, that but for counsel's unprofessional errors, the result of the proceeding would have been different. Again by looking at the plea agreement, it was altered so that no acceptance of $54,088 in tax liability was acknowledged by the Petitioner. How can the government and Judge Redden state that the Petitioner was aware at the time of sentencing that he would be required to pay $54,088 in restitution as part of the plea agreement when the plea agreement was altered by the wording, "The government intends to prove that Taylor owes $54,088? In addition, as mentioned earlier on the government's Exhibit B-11 page 33 and 34, the government does not seek the admission that the Defendant owes $54,088. Also Mr. Hoevet told Petitioner the plea agreement was written this way after the meeting in Judge Redden's chambers. Petitioner also would like to state that he read what his lawyer gave to him on the morning of sentencing and that Petitioner signed the plea agreement only because he was brow-beaten by Mr. Hoevet into doing so because Mr. Hoevet had promised the government

the Petitioner would do so and Mr. Hoevet was preserving his reputation instead of reacting to Petitioner's requests and concerns. If the government feels the Petitioner received a superb resolution, let the Petitioner have his day in Court in front of his peers.

LAW THAT SUPPORTS THESE ISSUES.

1. Motion to Withdraw Guilty Plea Before Sentencing

Federal Rule 32(d) of the Federal Rules of Criminal Procedure.

"Under this rule there is no time limit within which to make the motion and it is clear that manifest justice will result if the motion is not granted, a judgement may be set aside and the defendant permitted to withdraw his guilty plea"
Gilinsky v. U.S. (1964) CA9 Rev 375 F2nd 914.

"Withdrawl of a plea of guilty should be liberally granted."
Spradley v. U.S. (1970) CA5 F1 421 F2nd 1043.

2. Defendant can appeal after 30 days if he can show good cause for failure to appeal and prejudice.

U.S. v. Frady, 456 US 153, 168 (1982).

3. Conviction obtained by plea of guilty not made voluntarily or with understanding of the nature of the charge.

"As there is not currently a "meeting of the minds" Defendant has the opportunity to withdraw plea.
Houmis v. U.S. (1977), CA3 Pa 558 F2d 182.

4. Guilty plea induced by use of threats or coerced confession or fear.

"A guilty plea is void is induced by promises or threats."

Marchinalda v. U.S. (1962) 388 U.S. 487 7Ed 2d 473 82s Ct 510.
U.S. v. Goodman (1979) CA and ARK 590 F 2d 705, cert den 440 985 602 Cd 248, 995 Ct. 1801.

5. Newly Discovered Evidence

Federal Rule of Criminal Procedure 33

6. Effective assistance of Counsel

"Chambers v. United States, 22 F.3d 939, 945-46 (9th Cir. 1994)
Murray v. Carrier, 477 U.S. 478, 488 (1986)
Strickland v. Washington, 466 U.S. 668, 690 (1984), Id at 694Judge Redden in his Opinion dated January 17, 1995 gives weight to Chizen v. Hunter, 809 F.2d 560, 562. The plea agreement states "The government will prove that Mr. Taylor owes $54,088. The original wording of the plea agreement was CROSSED OUT. There is not agreement therefore Chizen v. Hunter would not apply.

The main issues noted by petitioner are (1) duress (2) no meeting of the minds as to the plea agreement (3) withdrawl of guilty plea before sentencing (4) direct appeal (5) newly discovered evidence and (6) effective assistance of counsel.

(1) Duress: The petitioner has stated that his actions were the result of fear and duress. The fear was due to the government's threat in the Plea Agreement cover letter of June 28, 1994 page 2 (Exhibit 7 of the petitioner's opening brief) that they would ask for a 2 point enhancement for obstruction of justice if the petitioner testified and was found guilty. This would mean a minimum(and they underlined minimum) prison time of 12-18 months. Now in the governments Brief of the Appellee they say on page 23 they would ask for this obstruction of justice only if defendant testified FALSELY.

The Government is changing their words and selectively using defendants words without the underlying reasons and INTENT behind them. It is clear from the petitioner's change of plea twice during this process that he was under a lot of pressure and that his actions were driven by fear.

In Judge Redden's Opinion he stated this letter was not a threat, but a candid government assessment of the guideline sentence it would request. Why did they have to underline the word "minimum". If this is not a threat or

scare tactic I do not know what is. It certainly scared the petitioner as it would 99.9% of every sane adult. If the choice is 4 months home detention versus 12-18 months (minimum 12 months) in jail. No matter if someone is innocent or guilty this obvious scare tactic does not allow them a proper choice about going to trial without threats or coercion.

Petitioner's statement about wilfully filing a 1987 joint U.S. income tax return which understated our taxable income doesn't make sense. These words were written in by petitioner's lawyer and could be considered as having no evasion implications due to loss carrybacks, business losses, and other proper deductions. This statement was ageed to by the petitioner's attorney not the petitioner, which is another reason for no meeting of the minds on the plea agreement.

The plea agreement by the government is boilerplate language and the government is using the language to disguise the underlying INTENT of the petitioner. That intent was always not agreeing that there was wilfull evasion but innocent mistakes and accepting the plea agreement due to fear of 12-18 months possible prison time and the impact upon that to petitioner's 92 year old father and to petitioner himself physically and mentally.

The petitioner is asking this Court to look at the mental impact of 12-18

months prison time on someone who had never had a criminal record nor ever any criminal offenses. In fact a record for doing good for society in terms of past activities and endeavors. This whole experience was a shock to petitioner who mentally was in unchartered land and unsure about how to react. Any sane person innocent or guilty would choose the plea agreement.

Truly, the only reason petitioner considered accepting the plea agreement was due to fear and the written threats by the Government of a long prison sentence if the petitioner testified no matter whether he did so truthfully or otherwise.

There is a multitude of legal cases some of which are noted below and in the 14th Amendment and the Bill of Rights as well as basicCivil rights that an illegally coerced confession if involuntary and due to fear and duress is void and inadmissable.

People v. Leyra 302 NY 353 (1951)
Duncan v. Nelson 466 F2d 939

A plea of guilty is void if it is tainted by "any semblance of coercion"

Euziere v. US CA OK 1957 249 F2d 297.
U.S. v. Malcolm CA NY 1970 432 F2d 809

The plea agreement cover letter and the impact upon petitioner from his change of plea and withdrawl letters clearly shows the element fear and duress which it impacted upon the petitioner's decision not to go to trial.

the petitioner deserved the right to go to trial without any such fear and his basic rights noted above were violated by not being allowed to make this decision without this cloud and threat of 12-18 months prison time hanging over his head.

There is also no basis under the legal term "obstruction of justice", for this to have any basis by the petitioner just testifying for himself. The Government was inaccurate about what constitutes "obstruction of justice" and since their inaccurate threat caused the petitioner fear to not be able to clearly decide to testify for himself this should be grounds for the confession and plea bargain to be ordered as void.

There is the duty of this Court to supply corrective process where due process was denied due to the petitioner not having the opportunity to defend himself because he was coerced to accept a confession or plea bargain by threats and fear. He was denied his Fifth Amendment right to due process and his First Amendment right to free speech without intimidation and threats due to the Government having the intent to prevent petitioner from testifying on his own behalf.

Fisher v. State 145 Miss 116, 113 110 So. 361, 365.
Exparte Terry 128 US 289.

(2) No Meeting of the Minds in the Plea agreement

The petitioner told his attorney from the very beginning and even on his way over to the Court on the September 28 plea hearing that he would never agree to any agreement that he and his ex-wife owed the Government 54,088. This same day, there was this meeting in Judge Redden's chambers with petitioner's attorney Ronald Hoevet, Judge Redden, and the attorneys for the Government, Bud Fitzgerald and Arthur Lowry. Petitioner was late to this Court because petitioner's attorney and the attorneys for the government were discussing petitioner's insistence that he would accept no agreement which stated he and his ex-wife owed 54,000 because he has never from the beginning believed this to be the case. This meeting in Judge Redden's chambers apparently discussed this matter. As the petitioner was not invited to attend this meeting he does not know what was discussed but this was the reason why he would not accept the plea agreement. However, after the meeting, petitioner's attorney Mr. Hoevet told the petitioner that no specific amount of tax loss would have be agreed to by the petitioner. Again due to the already mentioned fear this was a very pressure packed morning for the petitioner.

The petitioner was scared. The one thing petitioner tried to do through his fear was have the INTENT brought up in Court that he did not believe he

and his ex-wife owed 54,088 in taxes. This is why he insisted the plea agreement be changed to not admit to this fact.

The government is incorrectly noting some other facts about this case.

Firstly, the petitioner did dispute Judge Redden's provision of restitution of 54,088 by his above -mentioned oral insistence to his attorney he would not accept any plea agreement which stated this as well as his Withdrawl of Plea Agrement. On page 18 of the Apellee' s brief they state that Petitioner did not assert that he had not agreed to the provision of 54,088. Petitioner due to his fear and duress did quite good to insist to his attorney that he would not accept such an agreement and that is why he had the plea agreement altered to what he asked for. The fact that it was not done entirely in all paragraphs does not negate his INTENT. Under the mental strain of defendant, he showed more then sufficient assertion that he did not agree to this tax loss figure.

Again no meeting of the minds as to the plea agrement.

The Trial Court should not accept a plea of guilty unless all provisions of the plea are fully agreed to by both sides so that defendant is able to make a voluntary and mutally agreed upon plea. Also that the defendant has the complete and accurate information consistent throughout the plea agreement.

Otherwise, defendant has the opportunity to withdraw plea as there is not currently a "meeting of the minds".

Houmis v U.S. (1977) CA3 Pa 558 F2d 182.
U.S. v. French CA 1983 719 F2d 387.

Trial Court should not accept plea of guilty unless there is full understanding between the parties and the defendant has full understanding of all details.

James v U.S. CA TX 1968 388, Fd 457.

It is obvious that this "meeting of the minds" has never happened or agreed to by both sides. Therefore defendant should be allowed to withdraw his plea ageement and/or it should be declared void.

The Government notes on page 19 of their reply brief that since only paragraph 3 of the plea bargain agreement was changed and not paragraph 4 or 6 this negates Petitioner's INTENT.
On a day where Petitioner was under terrible stress the Government is using this on their behalf.

There is a definite contradiction between on page 20 of the government's Apellee Brief that "the government does not necessarily seek and admission that the amount of the tax loss was 54,088 and that the government states that the parties agreed that the tax loss to the government was 54,088. The

fact is the plea agreement is not consistent from paragraph to paragraph and clearly shows the petitioner's INTENT even under the pressure he was under to do what he could to show his INTENT he did not feel that he and his ex-wife owed 54,088. The petitioner should not be punished for stating his INTENT and that the lawyers and the Court did not adjust the plea agreement to be consistent from paragraph to paragraph. In fact, because the Court did not make it consistent from paragraph to paragraph is a legal basis for overturn of the plea agreement.

There needs to be the element of the admittance of the 54,088 figure. This was even made mentioned of by Judge Redden. There never was one and no meeting of the minds and negates the entire plea agreement.

Even the prosecutor states "Your Honor, if I may? In the restitution from the defendant, the government did not hear any admission regarding the tax that was due which is an element". They didn't then and they never would because the petitioner never believed he and his ex-wife owed 54,000. There is no element here.

The Government said that since the petitioner said certain words he is obligated by those words. But those words were truly induced by a real threat and fear in the mind of the petitioner as it would any sane person. Whether this was intentional on the part of the government, which the

petitioner thinks was the case or not, the petitioner clearly saw this as a real threat to coerce him to accept the plea agreement or risk 12-18 months in jail. To be honest, the petitioner was scared and unsure how to handle this matter all the way from April 1993 when the indictment began. This was compounded by the fact that since 1986 the petitioner has been cooperative with all requests for information by the Internal Revenue Service and wanted to resolve this matter from the beginning and certainly not go to this level. Unless one has ever stepped in the petitioner's shoes who has never been in such a Court before and is staring at the Government's threat of a minimum of 12 months in prison, the Government nor its attorneys can scarcely know what type of physical and emotional strain goes into this type of situation. There is no question the petitioner said some things or agreed to some things he shouldn't have. But these were done of out of fear and duress caused unjustly by employees of the government.

Petitioner was physically ill each morning since the indictment in April and obviously this physical anguish as well as the mental anguish was greatly accentuated by the governments threat of a minimum (they meaning the employees of the government underlined the word "minimum" 12 months in prison if Mr. Taylor testifies (not testifies falsely but just testifies) and is

convicted versus 4 months of most likely probation. Its a big difference and obvious unjust pressure tactic not to have Petitioner go to trial without this fear.

SUMMARY AND CONCLUSION

This petition involves overt and underlined written threats by United States Government employees and the Internal Revenue Service. These threats and duress clearly caused petitioner to lose his Constitutional Rights. Petitioner would classify this as having exceptional importance. The opinion of the District Court does conflict with existing opinions by other courts and there is a need for national uniformity.

"Prosecutors must not mischarge, overreach, or threaten heavier sentences for those who do not plead guilty"

Griffith v. Wynrick 355 F2d 397

"A plea entered in due to coercion, mental or physical, or unfailry obtained must be vacated as void since it is violative of constitutional safeguards" Ward v. Page 2383 FSupp 431

"Where it appears that plea of guilty was made under some mistake, missapprehension, no meeting of the minds between the parties, denial of application to withdraw plea of guilty will constitute abuse of discretion'

Bigpond v. State 463 P2d 989.

Petitioner is asking for is an overturn of the Order by Judge Redden and

remanded to the District Court for trial.

Petitioner has shown by Court cases that all five questions asked at the beginning of this petition have been proven to be in his favor.

Petitioner deserves the Constitutional and Civil Right to free speech withouts threats or coercion and a due process trial by jury if he believes he is not which he said so in his affadavit up to sentencing.

He should be allowed to have a jury of his peers decide his innocence.

Respectively Submitted,

Jeffrey Roy Taylor
Pro Se

95-1656

Supreme Court, U.S.
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA NO. CR 93-118-01

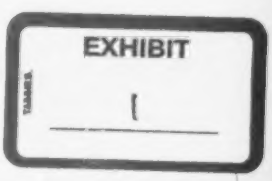
V. MOTION TO WITHDRAW PLEA PLEA OF GUILTY

JEFFREY ROY TAYLOR
Defendant

Jeffrey Roy Taylor, through his attorney, Ronald H. Hoevet of Hoevet and Snyder P.C. moves to withdraw his plea of guilty, pursuant to Rule 32(d) of the Federal Rules of Criminal Procedure.

Under Rule 32(d) a defendant may move to withdraw his plea of guilty before sentence is imposed upon a showing by the defendant of "any fair and just reason".

Although as a general rule, Federal District Judges freely allow a withdrawl of guilty pleas before sentence, there exists no right to withdraw a guilty plea. United States v. Paulson 798 F Supp. 636



(D Mont. 1992).

The burden is on Mr. Taylor to show any fair or just reason. Accompanying this motion is his affadavit. He hopes you will permit him to have his day in court.

DATED this 12th day of November 1993.

/s/ Ronald H. Hoevet

I, Jeffrey R. Taylor, being first duly sworn, do depose and say:

1. I am not guilty of willfully evading my income taxes for 1987.

2. My decision to plead guilty to wilfully evading my income taxes for 1987 was made at the eleventh hour. The day before the trial was to begin, I asked Mr. Hoevet to reopen plea negotiations with the attorneys for the government. I was disheartened. I believed, based on the non-wilful errors on my tax return and Mr. Hoevet's opinion that a jury would likely find me guilty.

8. I pray that the Court will exercise its broad discretion in

EXHIB
2

allowing me to withdraw my plea of guilty and proceed to trail.

Dated this 12 day of November 1993.

Jeffrey R. Taylor

Sentencing is set for December 6th at 1:30 p.m.

MR. FITZGERALD: Your Honor, if I may? In the restitution from the defendant, the Government did not hear any admission regarding the tax that was due which is an element.

THE COURT: I believe the plea agreement covered that. But the element you're speaking of is the 58,000 figure?

MR. HOEVET: Excuse me, your Honor. The plea petition states he understated his taxable income, which means he understated his taxes computed from the taxable income. We will agree he understated his taxable income and his income tax which is the element of the offense Mr. Fitzgerald thinks is missing.

THE COURT: You do acknowledge that? I thought you had so

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stated.

Would you repeat that for him Mr. Hoevet?

MR. HOEVET: Yes, in the petition as written out, it states he understated his income -- his taxable income. We would agree Mr. Taylor understated his taxable income and as a result, the taxes.

THE COURT: Is that correct?

MR. FITZGERALD: I would accept that, your Honor.

THE COURT: The further concession that the Government seeks, I gather is that the amount of the tax loss suffered as a result is 54,088.

MR. FITZGERALD: Your Honor, the Government does not necessarily seek that admission, but just the admissions to the element of the taxes that were due and owing considering the fact there might be credit that would apply and that sort of thing.

THE COURT: Okay. All right.

MR. FITZGERALD: The Government is satisfied.

THE COURT: I've signed the order. Is there anything further?

MR. FITZGERALD: Nothing from the Government, Your Honor.

MR. HOEVET: No, your Honor, thank you.

THE COURT: We will be in recess.

(CONCLUDED)

I certify that the foregoing is a true and accurate transcript of the record of proceedings in the above-entitled cause. October 1, 1993.

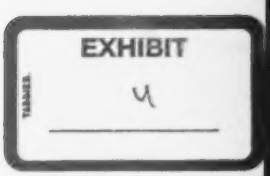
/s/ Jerry C. Harris
Official Reporter

June 28, 1993

U.S. Department of Justice

United States Attorney

District of Oregon



Ronald H. Hoevet Esq.
Hoevet, Snyder, and Miller, P.C.
2100 Standard Insurance Center
900 S.W. Fifth Avenue
Portland, OR 97204

Re: United States v. Jeffrey Taylor, CR No. 93-118-RE

Dear Mr. Hoevet:

Enclosed please find a plea agreement for your client and additional discovery in the above captioned case. As the government is required to inform the Court on July 9, 1993 whether the case is expected to proceed to trial, this offer expires at the close of business the previous day, July 8, 1993.

During our meeting on June 24, 1993, we discussed the possibility of examining whether the tax loss in the case could be lowered below 40,000. This would decrease the guidelines calculation by one offense level to 8 (with acceptance of responsibility) resulting in a guideline range of 0 to 6 months in the A range. You further requested that we not oppose a recommendation for home detention.

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We have examined the tax loss calculations again and discussed the matter with our supervisors. We concluded that the tax loss calculations are based on readily provable income items; consequently we would not be able to lower the tax calculations without violating department policy.

The guidelines tax loss calculations -- 54,088 -- results in an offense level 9 (assuming a two-level reduction for acceptance of responsibility) with a sentencing range of 4 to 10 months in the B range. If Mr. Taylor is inclined to accept this offer, we would be willing to join in a defense recommendation for probation with a confinement component of 4 months home detention (the low end of the applicable sentencing range).

If Mr. Taylor elects to pursue this case through trial and is convicted, he will be sentenced at an offense level 11, with a sentencing range of 8-14 months in the C range. Under these circumstances, the minimum sentence the Court could impose would require a period of confinement of at least 4 months in

prison, followied be either community or home confinement of 4 months.

Moreover, if Mr. Taylor testifies in his own defense and is convicted, we will request a two-point enhancement for obstruction of justice. This enhancement would raise Mr. Taylor's offense level to 13, requiring the Court to impose a minimum 12 month term of imprisonment on Mr. Taylor.

You will note that the plea agreement reflects our understanding that no additional enhancements beyond the base offense level are applicable in this case.

Please feel free to call me should you have any questions or comments about the foregoing. I can be reached at 202-514-5052 Washington DC or 503-727-1045 Portland, Oregon.

Yours sincerely,

/s/Arthur S. Lowry
Trial Attorney Tax Division
U.S. Department of Justice

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA DC CV 94-01414 JAR

Plaintiff-Apellee

v. MEMORANDUM

JEFFREY ROY TAYLOR

Defendant-Appellant

Appeal from the United States District Court

for the District of Oregon

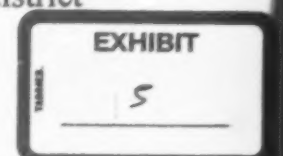
James A. Reden, District Judge, Presiding

Before: BEEZER, THOMPSON, and T.G. NELSON, Circuit Judges.

Taylor appeals pro se the denial of his 28 usc 2255 motion. We have jurisdiction pursuant to 29 usc 1291.

BACKGROUND

Taylor was indicted on two counts of tax evasion. Pursuant to a plea agreement he pleaded guilty to one count and the district



court accepted the plea. He then filed a motion to withdraw the plea, which the court denied. The court sentenced him to three years of probation, 54,088 in restitution and a 1,000 fine.

Taylor did not directly appeal his conviction. Instead he entered a motion under 28 USC 2255 to withdraw his guilty plea, arguing that 1. his presentence motion to withdraw should have been granted, 2. he did not enter the plea knowingly and voluntarily, 3. he was denied effective assistance of counsel, and 4. newly discovered evidence would have caused him not to plead guilty.

ANALYSIS

1. Motion to Withdraw Guilty Plea

Taylor argues that the court have granted his motion to withdraw his guilty plea. We review for abuse of discretion the denial of a motion to withdraw a guilty plea. Unite States v. Alber 56 f3d 1106,1111 (9th Cir 1995). If a defendant moves to withdraw a guilty plea before the imposition of sentence, the court

may permit withdrawl upon a showing of any fair or just reason. Fed r. Crim P. 32e.

Taylor said in the affidavit to his motion that he was not guilty of evading taxes and that he did not understand that the plea agreement contained a stipulation to a tax loss of 54,000. The court was entitled to credit his testimony a the plea hearing over the subsequent assertions in his affadivit.

2. Guilty Plea Invalid

Taylor contests the validity of his guilty plea. We review for error the findings of fact regarding the validity of a plea. A plea is invalid if induced by threats or promised which deprive it of the character of a voluntary act. Chizen v. Hunter, 809 F2d 560,561 (9th Cir. 1986).

Taylor argues that he did not enter the plea intelligently because he did not understand the terms of the plea agreement. He argues that there was no "meeting of the minds" between him and the government over the tax loss figure, and says that he "never,

never agreed that the tax loss was 54,088. To support this argument he cites a change in the wording of the plea agreement from "Mr. Taylor admits to "the government is prepared to prove that" the parties agreed to a tax loss of 54,088.

Taylor also contends that his plea was not voluntary because it was induced by threats and fear. He argues that the government threatened him by saying in its plea agreement cover letter that it would ask the court for an obstruction of justice enhancement if he testified on his own behalf and was convicted. This statement was not a threat but merely fair notice of what the government was entitled to recommend if he did not accept the plea. We reject his argument that his plea was not voluntary.

3. Ineffective assistance of counsel

Taylor contends that he was deprived effective assistance of counsel in violation of the Sixth Amendment. We review de novo ineffective assistance claims. To prevail on such a claim, the defendant must demonstrate that counsels actions were outside the

wide range of professionally competent assistance, and that he was prejudiced by reason of these actions. Strickland v Washington, 466 US 668, (1984).

Taylor contends that his attorney "browbeat" him into accepting the plea. Specifically he says that his attorney told him that his ex-wife and former accountant would testify that he wilffully underreported his income if he did not accept the plea. He says that his ex-wife and former accountant later told him that they believed he had made some innocent mistakes on his tax return but that fthey were not willful. Taylor has not, however provided any evidence to support these assertions. Taylor has not made the requisite showing of deficient representation.

Taylor also contends that his attorney failed to inform him that he could appeal and inform him of the filing deadline such an appeal. Assuming his attorney did fail to inform hi, no prejudice exists because, as shown above, Taylor would have no grounds for successfully challenging his guilty plea.

4. New Evidence

We review for clear error the district court's factual findings on claims of newly discovered evidence. United States v. Estrada-Plata, 57 F3d 757, 763 (1995). Taylor contends that new evidence in the form of corporate bank statements and corporate tax returns came to light six months after his conviction which support his claim that the tax loss was lower than 54,088. He says that these documents show that he paid his company's overdraft loans with personal income and reported personal income on corporate returns, resulting in lower personal income and tax. We agree with the district court that this new evidence does not provide a basis for invalidating his guilty plea.

AFFIRMED

A True Copy
Cathy A Catterson
Clerk of the Court
Attest

February 21, 1996